

July 27, 2004 UNOFFICIAL MINUTES

Chairman Forrest Sprague began the hearing at 7:30 p.m. with Kenneth Borden, A. Dianne Medbury, Fritz Benz, Dwight Farrar, Thomas Stones and Stephen Gaddes present. Not present was Paul Durfee. Also present was Dianne Izzo, representing the Town Solicitor's office, Gorham & Gorham. Chairman Sprague explained how the hearing is conducted and the use of the tape recording machine. He also requested that anyone with a cellular phone turn it off during the hearing. Chairman Sprague read the agenda for the meeting. Chairman Sprague explained that the Collins case would be coming back next month. Chairman also explained that everyone must identify themselves and only one person at a time speaking. The reason for this is to be able to understand and know who is speaking on the tape recording of the meeting.

BARDEN, GILBERT & SANDRA, Case #914. Chairman Sprague read a letter from the Bardens into the record. Fritz Benz questioned with all the property that the Barden's own and the proximity of an entrance to your existing home, why would this location be preferable to you. Mr. Barden explained that this location is important because it closer to the Oak tree for shade and that it is in an area that can't be planted with apple or peach trees because there is so much shade. 75% to 80% of income is over the course of 4 weekends at the end of September and beginning of October where we do 'pick your own'. We open up at the house during that time. We also, as my

grandparents did since the 60's, have set up on Pole Bridge Road with a table, with baskets, bags and a cash box to sell apples pick-your-own. What happens on weekends we shuttle everything up and down. Last year we setup an E-Z Up tarp and that was blown over. We want something there so we can store our scales, bags, etc.

Fritz Benz asked if it is the Barden's intent to sell retail from this building. Mr. Barden stated that they may apply for a Special Use Permit in the future; but if we do not obtain that we want the barn there for storage.

Dwight Farrar asked Mrs. Barden to point out what trees and where they are around the proposed location. Mrs. Barden showed Mr. Farrar that they would have to cut down a few of the larger apple trees and there are some new peach trees. Steve Gaddes asked where the open side of the building would face? Mr. Barden stated that the open side would face south toward Pole Bridge Road. Chairman Sprague explained that he went to the location and measured from the Oak Tree back. He went 80' before he got to an apple tree. Mr. Barden explained that they may plant this orchard over and we want to keep the sunny area for planting. Mr. Barden explained that the blue ribbons are the property line. The barn would be 15' from those blue ribbons, which is the property line. David Provonsil explained the corner lot setbacks. Dianne Medbury made a motion to grant the dimensional variance as per the application. There was no second to the motion. Ken Borden explained his concern with so much land why does the barn have to go in that one spot. Dwight Farrar explained that he is concerned that the 15'

setback would not be enough if the state were to come in and take that corner. They could come in at any time and cut that corner back putting the barn right on the road at that dangerous intersection. Tom Stones stated that he agreed with Dwight Farrar in regards to what the state could do. Several members asked Mr. Barden if he could move the barn back or over, farther away from the lot lines. Mr. Barden stated that he wants to plant more orchard in the sunny area. Tom Stones stated that the board does not want to cut down any existing fruit bearing trees, which are income to the Barden's, but the board cannot take into account the planting of new trees. Mr. Stones stated that they would not want to decrease the income of the present orchard. Mr. Stones suggested meeting with a couple of board members at the site to work out a suitable site. Chairman Sprague agreed to meet at the site to look over the site and find a suitable site.

Chairman Sprague explained to Mr. Barden that he has a few choices; he would meet him at the site, The Barden's could table the application or withdraw without prejudice. Mr. Barden asked if he withdrew would he have to pay the fee again. He was told yes, he would have to pay again. Mr. Barden asked for a decision. Kenneth Borden made a motion to deny the application on the grounds that the applicant did not show the entitlement for relief sought with appropriate evidence.

VOTE: Kenneth Borden, yes; Fritz Benz, yes; Dwight Farrar, yes; Dianne Medbury, no; Forrest Sprague, yes.

DECISION: To deny the application on the grounds that the applicant did not show the entitlement for relief sought with appropriate evidence.

In denying a Dimensional Variance, the board makes the following findings of fact:

This is a corner lot and the dimensional variance requested places the entire building between the required setback and the property line.

The petitioner has not shown entitlement to the relief sought by appropriate evidence.

SIMMS, SALLY, Case #916. Chairman Sprague read the application. Attorney Richard Kyte, Jr. introduced himself and stated that he would be representing Mrs. Simms. He stated that he had 2 witnesses this evening, Mrs. Sally Simms and Mr. Mark Boyer. Dianne Izzo explained to the board that this applicant came before us October 22, 2002 Case #840. That application was denied and later appealed to the courts by Mrs. Simms. Chairman Sprague asked David Provonsil if there was an opinion from the Plan Commission. Mr. Provonsil reported that the Plan Commission voted to have the same opinion as they did in July 2002; the proposal is in conformance with our Comprehensive Plan; as long as the proposed dwelling is consistent with the neighborhood and all environmental permits are obtained. On questioning by Mr. Borden, Ms. Izzo revealed that the appeal had been withdrawn. Mr. Borden therefore

opined that our prior decision had become final.

Mr. Kyte introduced Mr. Mark Boyer who testified that he is a Professional Land Surveyor with a business at 1200 Main Street, West Warwick, RI and also certified in Connecticut. Mr. Boyer stated that he has testified before this board before. Mr. Boyer explained that he was hired to survey the land and design the septic system. Mr. Boyer stated that he believes this originally was one continuous piece of property that was cut into 3 lots. The proposed house is 45' x 26.67' approximately 1200 sq. ft. on 11% of the lot. The building frontage will be on William Henry Road with 17.8' and the side would be on Central Avenue at 15'. The side yard is maintained at 35.3'. This application is subject to all environmental permits; well & ISDS. Mr. Boyer stated that this is a modest building by today's standards. Mr. Kyte stated that the applicant is asking for the least variance necessary.

Chairman Sprague asked if there was anyone in the audience that wanted to speak for or against the applicant. Gail Ragosta of 211 Central Avenue stated that she is concerned about the threat to the wells. Joseph Maggio of 217 Central Avenue. I don't understand why we are back here. When this application came before the board previously the board's decision back then was that it was pretty much an unbuildable lot; that was created when the applicant subdivided the lot from the house lot I am living in now. I am concerned about the school bus turnaround. We have not been told the status of that

bus turn around. We moved here from Providence and bought this piece because the lot was in an unbuildable status. We are also concerned about the ISDS in the close proximity of the existing wells.

Unless that lot grew, I don't know why we are back here. I don't want to be sandwiched in between houses. Chairman Sprague stated that he did not think the board should go much further without looking at the doctrine of administrative finality. Kenneth Borden asked that we look at the last proposal; I don't see any difference. Chairman Sprague stated that he has the previous plan is dated September 2002. Mr. Kyte stated that the board made a finding that the application was around 2200 sq. ft. The present application is a smaller dwelling; with a reduction of in excess of 1,000 sq. ft.

Dwight Farrar asked if the size of the system changed. Mr. Boyer stated the design is still for 3 bedrooms. We have not done any testing for the size of the system. Dwight Farrar asked Mr. Boyer if DEM required a larger system due to the drainage; it might end up being a problem with the wells. Mr. Boyer stated that if this went to DEM the system would probably be smaller. It would probably be a bottomless sand filter 10' x 15' and above ground. Chairman Sprague asked where the Town turn-around is on the plan. Chairman Sprague asked Mr. Boyer if they need an alternate area for the ISDS where it would go. Mr. Boyer stated that they have done no testing whatsoever on this piece of property. Fritz Benz questioned the status of the turn around. Mr. Benz asked if this is a voluntary award to the State/Town with restrictions. Mr. Boyer explained when they did the research for their survey there were no deed transactions with

regard to that property. Chairman Sprague asked about the alternate site for a septic system. Mr. Boyer stated that when the ISDS is designed there would have to be an alternate site. Kenneth Borden asked how the lot was created. Mr. Kyte explained that it was created by deed in 1958. Chairman Sprague stated that was before Zoning. Mr. Kyte states yes, July 7, 1958. There was a lengthy discussion on the setbacks, what setbacks are need for this lot and the difference between triangle lots and street side corner lots.

Randy DiSano, 325 William Henry Road (sworn in) stated that he and many of the neighbors thought this was a dead issue after the last meeting. They are asking for numerous variances as they were before. They are making it a little closer than before. The neighbors shouldn't have to worry about coming here every year to protect the integrity of the neighborhood. I ask any one of you, if you were living across the street, what would you think. Gwenn Stearn, 349 William Henry Road, (sworn in) who lives at the corner of Peck Hill, William Henry and Central Avenue stated that she has concerns about the wells in the neighborhood and the well for the proposed house. The biggest issue is the safety with the elimination of the cutout. The safety of the children and school buses should be a big concern of this board. The buses will have to turn around at the intersection of Peck Hill, William Henry & Central. I live right there at the corner and people do not observe the stop sign.

Chairman Sprague asked the distance of the well from the property

line. There is no distance from the property line. Mr. Boyer stated that the regulation is from a paved surface not the property line. Chairman Sprague asked how could you put a well where it is proposed. Mr. Boyer stated that they would need a variance. Mr. Kyte stated that if this application is approved it would be subject to all other permit variances. Chairman Sprague stated that if the regulation is 50' from a paved surface, a well wouldn't fit. There is only 90' depth between Central Avenue & William Henry Road; 50' from Central Avenue and 50' from William Henry, it won't fit. Dwight Farrar asked if there was anything in our ordinance regarding wells. Mr. Boyer stated no, that is state jurisdiction.

Elizabeth Maggio, 217 Central Avenue (sworn in). All the reasons that the variances were denied last time, nothing has changed. The applicant created the sub-standard lot of record in 1958. According to the Zoning laws, if you created the hardship, you can't request a variance for it. The square footage that is being quoted at 10,885 includes that paved area of road; which we measured comes out to 900 sq. ft. The turnaround has been maintained by the Town for over 40 years, since I was in school. The main question that everyone has is what will happen to the turn around. Mr. Kyte reiterated that the applicant is only here for dimensional relief. Luca Ragosta, 211 Central Avenue, (sworn in) asked who owns the turn-around? The board was told that the turn-around is part of that parcel. Mr. Ragosta stated that without the road it is sub-standard. Mr. Boyer stated that the deed had no indication of the turn-around being deeded to the

Town. Lisa Rosa-Smith of 11 Peck Hill Road (sworn in). In the winter someone will crash into the well, house, or septic system during a snowstorm.

Thomas Stones stated that he didn't know why we are re-visiting this.

Chairman Sprague stated that we have to determine if there was enough of change. Tom Stones stated that the dimensions of the lot have not changed. They are still requesting dimensional variances. They are still requesting the same type of variances. It seems to me overall it is the same. Kenneth Borden stated when he opened the package and saw it; I thought it was the same as we had before. It looks to me the same thing; no changes. Dianne Izzo stated that the previous case was not final because it was on appeal. The previous application was appealed to Superior Court and that appeal was never completed. Ken Borden stated that if we denied it and it was appealed and the appeal was withdrawn, our denial is final. Dianne Izzo stated that the application was accepted for your review. Ken Borden wanted to make the record clear that the previous application was denied and that denial is final. On the facts of that application it is final. Ken Borden stated we must determine if this application is different so it is entitled to consideration. Dianne Izzo stated that this application is not identical. Ken Borden asked if there is a material change, is there a significant change; so they can ask for the same relief. Fritz Benz stated that he does not think there is significant change. Ken Borden stated that there might be a difference in the amount of variance, but they are still asking for the same relief.

Dwight Farrar pointed out that it is still a three-bedroom house, two-car garage but shrunk down. The house is smaller. Thomas Stones stated that Administrative Finality is in place, based on the appeal it is over. This is over. If Administrative Finality is in place this should be considered legally. Tom Stones asked Dianne Izzo's opinion. Ms. Izzo stated that you are opening yourself in a way to a takings situation; saying that there is absolutely nothing buildable on a lot that has been deemed buildable. Tom Stones stated that we have made that decision before and then it was appealed. As far as we were concerned Administrative Finality took place and then was appealed, so it was on hold. Now the appeal is withdrawn, it seems to me that Administrative Finality is in place, it has always been there. It was only put on hold because of the appeal. The appeal process has now stopped; therefore, the Administrative Finality is in place. Dwight Farrar asked if we have a copy of our written decision to read. I think we should read it out loud so we can see what the differences are. Thomas Stone stated that we could do that, but he doesn't think we should. If we do that, we are going to be opening ourselves up to "we've done this before" even though administrative finality should have taken place. We make administrative finality quite clear to the applicants, as we did the prior people this evening. We ask the applicants if they are sure they want us to make the decision with administrative finality. Tom Stones stated that he does not think there are any significant differences here. Chairman Sprague stated that he couldn't picture this being a buildable lot. Not every lot in Town is a buildable lot. Thomas Stones stated that if we go through

this again, saying once again that this is not a buildable lot we are opening ourselves up to all kinds of things. Fritz Benz stated that the original decision should hold simply because this application does not contain significant differences from the original application which was denied.

Dianne Izzo brought the board's attention to Art. XI, Section 3 Consistent with the doctrine of administrative finality as enunciated by the Supreme Court of Rhode Island after a final decision by the zoning board a successive similar application may not be entertained, unless the applicant can show a substantial and material change in circumstances since the date of the next prior application. Ms. Izzo stated that the board has to decide if they have met that burden or not. Ken Borden stated that the only question here is if this is a similar application. Kenneth Borden made motion that we deny it on 2 grounds; 1st on the ground of administrative finality and 2nd on the merits. By the merits I mean, I don't think that the evidence that is presented warrants us in exercising our discretion to grant it because it is not consistent with the neighborhood, it is much too close to the lot lines and presents too many problems.

Tom Stones explained what a quagmire this thing has got us into here. That should tell us something. Fritz Benz agrees that Section 3 spells it out. Ken Borden explained that what he is saying in his motion is that no change of circumstance was shown whatever and the application is similar and therefore is barred. I would also

suggest that if we were going to entertain it as a new application, without the doctrine of administrative finality being involved at all, the dimensional variances of these proportions wouldn't be justified. Dianne Izzo asked that they list the similarity of facts. Dwight Farrar stated that it is still a three-bedroom home with a 2-car garage. Kenneth Borden explained that the similarity is simple. The relief sought is precisely the same; the size of the house is slightly different, the dimensional request for dimensional variances are slightly different but not materially different. It is essentially the same application. Fritz Benz seconded the motion.

VOTE: Fritz Benz, yes; Kenneth Borden, yes; Dwight Farrar, yes; Dianne Medbury, yes; Forrest Sprague, yes.

DECISION: To be written by counsel.

DIRISSIO, EDWARD, Case #917. Chairman Sprague read the application. David Provonsil reported that the Plan Commission determined that this is not addressed in the Comprehensive Plan. Edward DiRissio of 31 Mountain Laurel Lane (sworn in). Mr. DiRissio explained because of his health concerns he wants to put the garage where it is shown on the application. Mr. DiRissio explained that the entrance and exit of the drive would be the same. The new garage would not hamper the traffic flow on the street. Carolyn Dias, 34 Mountain Laurel Lane (sworn in) stated that she is the neighbor across the street and had no problem with the proposed location of

the garage. Pam Pino, 17 Mountain Laurel Lane (sworn in) stated that she is in favor of this project. Chairman Sprague asked how many stories high the garage would be. Mr. DiRissio explained 1 floor with 2 garage doors. Fritz Benz made a motion to approve the application. Seconded by Dwight Farrar.

VOTE: Kenneth Borden, yes; Dianne Medbury, yes; Dwight Farrar, yes; Fritz Benz, yes; Forrest Sprague, yes.

DECISION: To grant a Dimensional Variance for Front Yard Setback to construct a detached 2-car garage.

In granting a Dimensional Variance, the board makes the following findings of fact:

The garage cannot be placed further back due to the location of the septic system.

This is the most reasonable location for the garage.

It will be a one-story garage.

The relief is 15'; the garage to be 35' from the property line.

In granting a dimensional variance, the board finds that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience.

In granting the variance, the relief sought will not be contrary to the public interest and relief shown in the ordinance.

MAGGIACOMO, SALVATORE, Case #918. Chairman Sprague read the application into the record. David Provonsil reported that the Plan Commission determined that this is not addressed in the Comprehensive Plan. Joseph Maggiacamo, (sworn in) stated that he is representing his father this evening. He explained that due to the constraints placed on this lot by DEM there is no other place to put the porch. David Provonsil explained to the members that the lots in this area were platted off when the front yard setback was 40'; making this porch, at 45', comparable with the neighborhood. Kenneth Borden made a motion to approve the request for a dimensional variance of 5' as requested. Seconded by Fritz Benz.

VOTE: Kenneth Borden, yes; Fritz Benz, yes; Dwight Farrar, yes; Dianne Medbury, yes; Forrest Sprague, yes.

DECISION: To grant a Dimensional Variance for Front Yard Setback to construct a porch on the front of a new home.

In granting a Dimensional Variance, the board makes the following findings of fact:

Due to the wetlands on the property, there is no other location for the house.

In granting a dimensional variance, the board finds that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience.

In granting the variance, the relief sought will not be contrary to the public interest and relief shown in the ordinance.

Kenneth Borden made a motion to accept the minutes of the June 22, 2004 meeting. Seconded by Fritz Benz, unanimously approved.

Chairman Sprague asked the Board if they would consider taking 5 applications in September; the 4 monthly applications and the Collins' return. Yes.

Chairman Sprague passed out the new state "Low Income Housing Statute" for the members to read.

Kenneth Borden made a motion to adjourn at 10:00 p.m. Seconded by Fritz Benz.

Respectfully submitted,

